IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 14593 of 2006(K)

PETITIONER:

BIJU POULOSE, AGED 36 YEARS,
S/O. POULOSE, PAREKUDIYIL, VARAPPETTY,
KOTHAMANGALAM.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS:

1.VARAPPETTY GRAMA PANCHAYAT,
REPRSENTED BY ITS SECRETARY, VARAPPETTY,
KOTHAMANGALAM.

2.HEALTH SUPERVISOR,
PRIMARY HEALTH CENTRE, VARAPPETTY, KOTHAMANGALAM.

*ADDL.R3.THE ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, CENTRAL BOARD, ERNAKULAM.

**ADDL.R4. ELDHOSE KURIAKOSE, AGED 41 YEARS, S/O.KURIAKOSE, KOYAKKATTU HOUSE, VARAPPETTY P.O., MOTHAMANGALAM.

**ADDL.R5. P.V.SASINDRAN, AGED 49 YEARS, S/O.VELAYUDHAN, PUTHIYEDATH HOUSE, VARAPPETTY P.O., MOTHAMANGALAM.

**ADDL.R6. K.T.THOMAS, AGED 55 YEARS, S/O.THOMMY, KANDOTH HOUSE, VARAPPETTY P.O., MOTHAMANGALAM.

*ADDL.R3 IS IMPLEADED AS PER THE ORDER DATED 9.8.2006 IN I.A.NO.10627/06.

**ADDL.R4 TO R6 ARE IMPLEADED AS PER THE ORDER DATED 11.10.2006 IN I.A.NO.14078/06.

R1 BY ADV. SRI.A.C.DEVY
SRI.A.R.ANI
R2 BY GOVERNMENT PLEADER MR.K.J.MOHAMMED ANSAR
ADDL.R4 TO R6 BY ADV.SRI.GEORGE ABRAHAM
ADDL.R3 BY SRI.K.K.THULASIBHAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.14593 OF 2006

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DATED THIS THE 8TH FEBRUARY, 2007

J U D G M E N T

A physically handicapped educated youth is aggrieved by Ext.P6 order of the 1st respondent-Varapetty Grama Panchayat directing immediate closure of the chicken farm which was being conducted by him, on the reason that the farm is causing severe pollution and serious health hazards. The 2nd respondent is the Health Supervisor of the Primary Health Centre. The Environmental Engineer of the Pollution Control Board, Ernakulam was impleaded as additional 3rd respondent. Additional respondents 4 to 6 who were persons opposed to the conduct of the chicken farm by the petitioner were impleaded on their application.

2. On admitting the Writ Petition, this Court noticed that Ext.P6 was passed without hearing the petitioner and directed Ext.P6 to be treated as a provisional order and permitted the petitioner to file objections to the same. The Panchayat was directed to take a decision on the basis of the objections after hearing the petitioner and to pass a reasoned order. It was observed that if the petitioner is aggrieved he can pursue his statutory remedies. Ext.P6 was ordered to be kept in abeyance for a period of two months.

3. The writ petitioner relies on various documents. Ext.P1 is copy of the disability certificate issued by the General Hospital to him. Ext.P2 is copy of licence dated 24.6.2005 issued by the Panchayat for the conduct of chicken farm. Ext.P3 is copy of the certificate issued by 2nd respondent which is to the effect that there are no residential buildings within 100 metres of the farm and that the farm is being conducted in a hygienic way. Ext.P4 dated 17.3.2006 is copy of the application submitted by the petitioner for renewal of licence for the year 2006-07. Ext.P5 is copy of the receipt against remittance of licence fee. Ext.P6 is the impugned order of the Panchayat directing the petitioner to stop the chicken farm within seven days. The petitioner submits that Ext.P6 was issued ignoring Ext.P4 application which was pending consideration before the Panchayat and the circumstance that the same has not been rejected so far. He contends that there are no buildings within 100 metres of the chicken farm. It is only because of the change in the ruling party of the Panchayat that Ext.P6 order was issued at the instance of persons who are politically opposed towards the petitioner. The chicken farm is the sole means of livelihood for the petitioner and he will be doomed if Ext.P6 is allowed to remain. In the Writ Petition the petitioner has

undertaken to abide by any condition which may be imposed by the concerned authorities for keeping the chicken farm more hygienic and prays that Ext.P6 be quashed and that the Panchayat be directed to renew the licence by allowing Ext.P4.

4. The 1st respondent-Panchayat has filed a detailed counter affidavit wherein it is contended that no objections have been filed by the petitioner so far to Ext.P6 on the basis of the interim order passed by this Court in this case. The counter affidavit denies the claim of the petitioner that there is no building within 100 metres from his farm. What has been certified in Ext.P3 is only that 100 feet is the distance from the farm to the nearest neighbouring residence. Ext.R1 (a) produced along with the counter affidavit is copy of the notice dated 7.2.2006 served on the petitioner by the Panchayat requiring him to remove the solid waste and filth from out of the farm and report the matter to the Panchayat. Ext.R1(a) was issued in the wake of complaints against the farm. The petitioner was informed by Ext.R1(a) that if he defaulted in the matter of removal of solid waste, the licence already issued to him should be treated as cancelled. The petitioner was having licence only upto 31.3.2006 which has not hitherto been renewed at all. The application for renewal of licence

stands actually rejected in view of Ext.R1(a) communication since the directions therein were not complied with by the petitioner. Ext.R1(b) is copy of complaint submitted by one K.T.Thomas and others before the District Collector which forwarded by the District Collector to the Secretary of the Panchayat on 22.3.2006. Pursuant to that, the complaint was got enquired into by the Public Health authorities and Ext.R1(c) is copy of the enquiry report. In Ext.R1(c) the 2nd respondent has strongly recommended not to issue any licence to the farm in its existing condition. It is reported in Ext.R1(c) that at the time of inspection of the farm by the medical officer in charge, it was noticed that there are 3000 poultries in the farm in four sheds. It is clearly reported therein that continued functioning of the farm will be injurious to public health. Ext.P6 order was issued in the light of Ext.R1(c) report. Moreover, the Panchayat by its resolution No.10 dated 29.5.2006 decided to reject the petitioner's application for licence. Ext.R1(d) is copy of that resolution. The facts being as above, there is no reason at all for quashing Ext.P6.

5. To the above counter affidavit the petitioner has filed a detailed reply affidavit. He has produced Ext.P7 copy of the objections dated 12.6.2006 submitted by him before the Secretary to

Ext.P6, as directed by this Court. He submits that though 13.6.2006 was a hartal day on which the Secretary was expected to be present in the Panchayat Office, he was not present. Therefore, she made her endorsement on Ext.P7 only on the 14th. The reply requests that the 1st respondent be prosecuted for having filed false affidavit before this Court. The reply refutes the contentions raised in the counter affidavit of the Panchayat. The persons mentioned in Ext.R1(b) are activists of the Left Democratic Front. The petitioner belongs to the opposite side, the United Democratic Front and worked for the UDF against the candidates of the LDF. This is the reason why false complaints are being filed against the petitioner so that he can be deprived of his only means of livelihood. Ext.P3 certificate issued by the Health Supervisor dated 18.4.2005 reveals the true state of affairs. The petitioner's own house is situated within 7 metres from the poultry shed. In that house, apart from the petitioner, his aged mother, wife and a six-month old baby are residing. An application for consent has been submitted to the Pollution Control Board. Copy of the said application is produced as Ext.P9. Pursuant to Ext.P9 the Pollution Control Board inspected the site and suggested a few measures for preventing pollution and the petitioner has already implemented those

measures. The petitioner is ready and willing to fulfill any measures suggested by any authority to avoid any pollution. But the present action of the 1st respondent is only due to political reasons. The petitioner has no information regarding the complaint filed by anybody before the District Collector. Copy of Ext.R1(b) is yet to be given to the petitioner. Ext.R1(a) reply has been submitted by the petitioner on 16.2.2006 and Ext.P10 is copy of that reply. The petitioner was having no information regarding any enquiry conducted by the Medical Officer-in-charge as shown in Ext.R1(c). No communication was received by the petitioner regarding that enquiry. The Health Officer has not informed or enquired anything about the conduct of the firm with the petitioner. Thus it is clear that the Medical Officer who issued Ext.R1(c) has colluded with the 1st respondent. Ext.P6 has been issued in violation of the principles of natural justice.

6. Subsequently, the petitioner has produced Ext.P11 which is copy of letter dated 22.7.2006 issued to him by the Senior Environmental Engineer of the Pollution Control Board. Ext.P11 shows that the Pollution Control Board while considering Ext.P9 consent application and a complaint received from the neighbourhood of the petitioner conducted an inspection on 23.6.2006 and that the

inspection reveal that there was genuineness in the complaint. Accordingly, under Ext.P11 three pollution control measures are directed to be taken and the petitioner is informed that his application will be considered only when there is satisfactory compliance of those three measures.

7. The Standing Counsel for the Pollution Control Board was directed on 26.10.2006 to file a report on the basis of the further inspection by the Board as to whether the directions in Ext.P11 have been complied with by the petitioner. Pursuant to that direction, a report has been submitted by the Standing Counsel on 23.1.2007. This report shows that the Board officials conducted a further inspection of the poultry farm and the area nearby on 30.10.2006. It was revealed in such inspection that the directions in Ext.P11 were complied with. However it was further reported that foul smell was still experienced near the sheds. The complainant was also informed about the foul smell during wind blow. The report also indicates that a meeting was convened 25.9.2006 in the office of the Pollution Control Board on the basis of the complaint regarding the nuisance caused by the poultry farm. During that meeting it was informed by the complainant that when the unit was started two years back, there was only one shed

having capacity of 1500 chicken. At that time there was no much nuisance. But presently there are four sheds which are all full of chicken. The licence also has been issued by the Panchayat only in respect of one shed and there is power connection only in one shed. Three sheds were additionally constructed by the petitioner for enhancing production. The nuisance can be eliminated if number of chicken is reduced. The report concludes by stating that the petitioner has been directed to restrict the farm activities in one shed only and that the application for consent is under processing.

8. Very elaborate submissions were addressed before me by Mr.Peeyus A.Kottam, counsel for the petitioner, Mr.A.C.Devy, counsel for the Panchayat and Mr.George Abraham, counsel for additional respondents 4, 5 and 6. Submissions were made by the counsel on the basis of the pleadings raised respectively by their parties and also on the basis of the documents placed on record by them. Mr.George Abraham, counsel for additional respondents 4, 5 and 6 would refer to Section 276(5) of the Kerala Panchayat Raj Act and submit that the Panchayat having already rejected the licence application/renewal application submitted by the petitioner, the remedy of the petitioner is to go in for appeal. Mr.George Abraham also invited my attention to

the judgment of this court in **Manjapra Grama Panchayat v. State of Kerala** (1996(2) KLT 719) and the judgment of the Supreme Court in **Action Council v. Benny Abraham** [2001(2) KLT 228 (SC)]. He reminded me that the judgment of the Division Bench of this court in **Action Council v. Benny Abraham** (2001(2) KLT 690) which takes the view that when the statutory consent and permits have been issued, the local authority is not justified in denying licence to an entrepreneur on considerations of public interest.

9. Having considered the rival submissions made at the Bar in the backdrop of relevant statutory provisions and taking into account the ratio emerging from the decisions cited at the Bar and other judicial precedents which are relevant, I am of the view that on the facts which obtained in this case, the petitioner who is a physically handicapped person who has no other means of livelihood should be permitted to conduct his chicken farm provided such conduct is strictly in conformity with the conditions of licence to be issued by the Panchayat and provided further that he has the statutory consent from the Pollution Control Board and from the Public Health Authorities. The petitioner is directed to produce consent from the Pollution Control Board in respect of his chicken farm from the

Panchayat within one month of receiving a copy of this judgment. The Panchayat will seek a report from the D.M.O., Ernakulam regarding the petitioner's chicken farm and the D.M.O., Ernakulam will depute an officer other than the author of Ext.R1(c) for the inspection to the petitioner's chicken farm. That officer will conduct inspection with notice to the petitioner and additional respondent No.6 and submit a report to the Panchayat. The Panchayat Secretary will reconsider the petitioner's application for licence/renewal of licence on the basis of the consent issued by the Pollution Control Board and the report submitted by the Officer to be deputed by the D.M.O., Ernakulam and take a fresh decision. Decision will be taken within one month of the petitioner producing consent from the Pollution Control Board and the Medical Officer to be deputed by the D.M.O. submitting his report. Decision will be taken after hearing the petitioner and the additional 6th respondent. In the meanwhile, the petitioner will be permitted to conduct the chicken farm subject to the aforesaid decision provided he complies with the following conditions strictly:

1. He reduces the number of sheds in his poultry farm to two within one week from today and reduces the same further to just one within another three weeks thereafter. Thus within a span of four weeks from

today, the petitioner will reduce the number of chicken in his farm to 1500.

2. The petitioner shall ensure that the soak pits which have been constructed by him pursuant to the directions given to him under Ext.P11 are functioning properly.

The Writ Petition will stand disposed of as above. No costs.

tgl/srd **PIUS C.KURIAKOSE, JUDGE**